



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2021-0610; FRL-9081-02-R4]

#### Air Plan Approval; North Carolina; North Carolina BART Rule Revisions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is finalizing approval of a North Carolina State Implementation Plan (SIP) revision, submitted through a letter dated April 13, 2021. The SIP revision includes changes to North Carolina's SIP-approved rule addressing best available retrofit technology (BART) for regional haze. EPA is approving North Carolina's SIP revision because the changes are consistent with Clean Air Act (CAA or Act) requirements.

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2021-0610. All documents in the docket are listed on the [www.regulations.gov](https://www.regulations.gov) web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](https://www.regulations.gov) or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding

Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Michele Notarianni, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Ms. Notarianni can be reached via telephone at (404) 562-9031 or electronic mail at [notarianni.michele@epa.gov](mailto:notarianni.michele@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Regional haze is visibility impairment that is produced by a multitude of sources and activities which are located across a broad geographic area and emit fine particulate matter (PM<sub>2.5</sub>) (e.g., sulfates, nitrates, organic carbon, elemental carbon, and soil dust) and their precursors (e.g., sulfur dioxide, nitrogen oxides, and in some cases, ammonia and volatile organic compounds). Fine particle precursors react in the atmosphere to form PM<sub>2.5</sub>, which impairs visibility by scattering and absorbing light. Visibility impairment (i.e., light scattering) reduces the clarity, color, and visible distance that one can see.

In sections 169A and 169B of the CAA, Congress created a program for protecting visibility in the nation's national parks and wilderness areas. The CAA establishes as a national goal the prevention of any future, and the remedying of any existing, anthropogenic impairment of visibility in 156 national parks and wilderness areas designated as mandatory Class I federal areas. Section 169A of the CAA directs states to evaluate the use of retrofit controls at certain larger, often uncontrolled, older stationary sources in order to address visibility impacts from these sources, often referred to as BART sources. The BART process includes evaluating retrofit controls for certain older sources, built between 1962 and 1977, which are identified as causing or contributing to visibility impairment at one or more Class I areas.

On April 27, 2022 (87 FR 24930), EPA proposed approval of an April 13, 2021, SIP revision from North Carolina, which modifies North Carolina's SIP-approved rule at 15A North

Carolina Administrative Code (NCAC) 02D .0543, *Best Available Retrofit Technology* (NC BART Rule) and applies to BART-eligible sources.<sup>1</sup> *See* 87 FR 24930. Comments on the April 27, 2022, NPRM were due on or before May 27, 2022. No public comments, adverse or otherwise, were received on the April 27, 2022, NPRM. For additional background on regional haze, BART, and the NC BART Rule, see the April 27, 2022 NPRM.

## **II. Incorporation by Reference**

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, as described in Section I of the preamble, EPA is finalizing the incorporation by reference of North Carolina rule 15A NCAC 02D .0543, entitled “*Best Available Retrofit Technology*,” which became state effective November 1, 2020. EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region 4 Office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA’s approval, and will be incorporated by reference in the next update to the SIP compilation.<sup>2</sup>

## **III. Final Action**

EPA is finalizing approval of North Carolina’s April 13, 2021, SIP revision, which makes changes to North Carolina’s SIP-approved rule addressing BART for regional haze, because the rule changes are consistent with CAA requirements.

## **IV. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40

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<sup>1</sup> The North Carolina SIP revision is dated April 13, 2021, and was submitted to EPA on April 14, 2021.

<sup>2</sup> *See* 62 FR 27968 (May 22, 1997).

CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

## **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 13, 2022.

**Daniel Blackman,**  
*Regional Administrator,*  
*Region 4.*

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

## **PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

### **Subpart II – North Carolina**

2. In § 52.1770 amend the table in paragraph (c)(1) by revising the entry for “Section .0543.”

The revision reads as follows:

#### **§ 52.1770 Identification of plan.**

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(c) \* \* \*

##### **(1) EPA Approved North Carolina Regulations**

State citation	Title/subject	State effective date	EPA approval date	Explanation
**	**	*	*	*
Section .0543	Best Available Retrofit Technology	11/1/2020	[Insert date of publication in FEDERAL REGISTER], [Insert citation of publication]	
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[FR Doc. 2022-13161 Filed: 6/17/2022 8:45 am; Publication Date: 6/21/2022]